

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BRANDON CHE LEE,	:	HABEAS CORPUS
Petitioner,	:	28 U.S.C. § 2241
	:	
v.	:	
	:	
UNKNOWN DEFENDANT,	:	CIVIL ACTION NO.
Respondent.	:	1:16-CV-4249-ODE-JFK

**UNITED STATES MAGISTRATE JUDGE’S
FINAL REPORT AND RECOMMENDATION**

The matter is before the Court on Petitioner’s response [5] to the Court’s Order [2] that construed his challenge to his conviction in United States v. Lee, No. 8:07-cr-0207-AG-1 (C.D. Cal. June 3, 2010), as being brought under 28 U.S.C. § 2241 and that directed him to pay the \$5.00 filing fee or apply for *in forma pauperis* status.

In response, Petitioner states that he is not an inmate, that he is detained under a fake judgment, and that he filed a complaint not a § 2241 petition. (Aff. at 1, ECF No. 5). If Plaintiff intended to file a complaint, he is subject to 28 U.S.C. § 1915(g). Section 1915(g) of Title 28 does not allow a prisoner to bring an *in forma pauperis* civil action in federal court “if the prisoner has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon

which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” When § 1915(g) does not allow a prisoner to proceed *in forma pauperis*, the complaint should be dismissed without prejudice, and, a prisoner wishing to pursue his claims, must refile the action with full payment of the filing fee. See Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002).

Plaintiff, while incarcerated, has filed at least three civil actions that have been dismissed as frivolous, malicious, or for failure to state a claim. See Order, Lee v. Feather, No. 3:16-cv-1536-HZ (D. Or. Sep. 22, 2016) (listing three district court dismissals); see also Lee v. Maye, Appeal No. 14-3214 (10th Cir. Jan. 7, 2015) (dismissing appeal as frivolous). This action must be dismissed as Plaintiff insists that he filed a complaint not a § 2241 petition and as his allegations do not show that he is in imminent danger of serious physical injury.

IT IS RECOMMENDED that Plaintiff be **DENIED** *in forma pauperis* status and that this action be **DISMISSED WITHOUT PREJUDICE**.

The Clerk is **DIRECTED** to withdraw the references to the Magistrate Judge.

IT IS SO RECOMMENDED this 14th day of March, 2017.



JANET F. KING
UNITED STATES MAGISTRATE JUDGE